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THE CHIRIQUI IMPROVEMENT COMPANY

AND

AMBROSE W. THOMPSON.

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ABSTRACT OF TITLES.

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NOTES
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ABSTRACT OF TITLE,

OF

THE CHIRIQUI IMPROVEMENT COMPANY, AND AMBROSE W. THOMPSON,
TO LANDS, FRANCHISES, AND OTHER PRIVILEGES, IN THE PROVINCE
OF CHIRIQUI, IN THE UNITED STATES OF COLOMBIA; AND IN THE
REPUBLIC OF COSTA RICA.

Lands, Franchises, and other Privileges in the Province of Chiriqui.

I.—The Constitution of 1853, of the Republic of New Granada, the basis of public administration throughout the Confederation, contained the following articles:

“ART. 10. The Republic of New Granada establishes for its management and general administration a popular representative alternative, and responsible Government. It reserves to the provinces or territorial sections the municipal power in all its amplitude.” * * *

“ART. 48. Each province has sufficient constitutional power to legislate on all that which they may think or judge convenient for their organization, management, and interior administration, without invading the objects which are of the competence of the General Government, regarding which the obligation to conform to the provision of this Constitution, or the laws, is absolute, and cannot be prescinded.”

“ART. 50. The government and municipal management of each province shall be in charge of a Provincial Legislature, in the legislative part, and of a Governor in the executive part, who will also be the natural agent of the General Executive power, with other functionaries which may be created for that purpose.”

Lands.

II.—(1.) Grant of public lands, with accompanying rights and privileges, made by the Camara, or Legislative Council, of the Province of Chiriqui, October 18, 1852, to Señor Santiago Agnew, at Golfo Dulce, on the Pacific side of the Isthmus.

(2.) Ordinance of same, December 31, 1852, fixing the limits of the grant, as follows: A line from the mouth of the De Las Esquinas river, in the centre of Golfo Dulce, to the summit of the Cordilleras: *and a line parallel thereto from the mouth of the Rio Chirra to the said Summit.*

(3.) Official declaration by the authorities of Chiriqui, May 4, 1853, that the conditions of the grant had been fulfilled, and formally declaring Señor Santiago Agnew in full possession of the lands.

(4.) Declaration, November 13, 1854, of equal partnership in the grant, between Señor Santiago Agnew and John Eugene Flandin.

(5.) Conveyance by Agnew and Flandin, and Ambrose W. Thompson, April 12, 1855, (on the part of Agnew and Flandin; of the lands included in the said grant: on the part of Ambrose W. Thompson; of the road-grant and accompanying land-grant hereinafter described,) (see section III,) to W. Russell Foster, Samuel E. Johnson, and Ambrose W. Thompson, trustees, in trust, to be conveyed to some company or corporation thereafter to be formed to execute the purposes of the respective grants.

(6.) Charter of the Chiriqui Improvement Company, granted by Legislature of Pennsylvania, acts of April 21 and May 6, 1854, and May 3, 1855; recognized by decree of the United States of Colombia, June 20, 1866.

(7.) Conveyance by said trustees, June 8, 1855, to the Chiriqui Improvement Company—conveys all said property held in trust, as aforesaid.

(8.) Conveyance, July 28, 1855, by Agnew and Flandin to the Chiriqui Improvement Company—a release, made in confirmation of the conveyance of June 8, 1855.

Road-grant and accompanying Land-grant.

III.—Grant of the Provincial Legislature of Chiriqui, February 20, 1854, to Ambrose W. Thompson, of the right to improve and use for sixty years, a provincial road from David, the capital of the Province, to Bocas del Toro, terminating at Chiriqui Lagoon, the road to be commenced in twenty-four months and completed in six years, the limitation of the grant being sixty years thereafter.

[This grant conveys land as follows:

(1.) Twenty-five varas in width along the line of the road.

(2.) Land requisite for buildings, materials, &c.

(3.) Fifteen thousand fanegadas of land north of the Cordilleras, and twenty-five thousand south of the same—being, in all, about forty-five thousand fanegadas, about one hundred and thirty-five thousand acres.]

(a.) The opinion of the Attorney-General of New Granada, affirming the grant as “essentially valid,” filed, and the decision of the Supreme Court of New Granada thereupon, January 11, 1855, that the ordinance of February 20, 1854, should be placed in the public archives.

(b.) Ordinance of the Provincial Legislature of Chiriqui, June 21, 1855, fixing the time within which the road should be opened, at twenty-

four months from September 1, 1855, and amending the original grant accordingly.

(c.) Certificate of the Minister of the Interior of New Granada, July 1, 1855, that the ordinance of February 20, 1854, had been submitted to the Attorney-General of the Republic for an official opinion upon the question whether it infringed any of the rights of the Panama Railroad Company, and the opinion of the Attorney-General, showing that it did not so infringe, and that proceedings for its annulment would be unauthorized.

(d.) Letter of the Prefect of the Department of Chiriqui, at David, the capital of Chiriqui, to the Alcalde of Bocas del Toro, June 22, 1856, acknowledging the receipt of the latter's notice to him of the arrival of the "Scientific Corps," to make the necessary surveys for carrying out the road-grant, which he declared to be "the commencement to the realization of all the hopes of the people," and "as the initiation of the movement towards civilization, which is to bring to these regions that intellectual and industrial culture which has so much advanced the people of the North and of Europe."

(e.) Despatch from the Alcalde of Bocas del Toro, to the Prefect of the Department of Chiriqui, September 17, 1857, showing the progress of the work in opening the road, by the Chiriqui Improvement Company.

(f.) Report of the agent of the Chiriqui Improvement Company, to the Prefect of the Department of Chiriqui, January 2, 1858, informing him of the opening of the road.

(g.) Despatch of the Prefect of Chiriqui, at David, under the seal of State, January 23, 1858, acknowledging, "with great satisfaction," the completion of the work, and approving the action of the postmaster at Bocas del Toro in accepting it by sending the mail over it.

(h.) Affidavit of George C. Shepherd, former Alcalde of Bocas del Toro, March 30, 1860, showing that not the mail only but loads of produce had been transported over the road, and the notification to the Prefect of the opening of the road; also, that the Chiriqui Improvement Company had furnished gratuitously a boat to transport the mail to the Island of Bocas del Toro regularly.

(i.) Certificate of twenty-one of the principal citizens of Bocas del Toro, (March 30, 1860,) attesting the truth of the statements made by Shepherd in his affidavit, and stating, furthermore, that it was "universally admitted, both in this town (Bocas del Toro) and the south side of the Isthmus, that Mr. Ambrose W. Thompson, through his agents and representatives, *has more than fulfilled the requirements of his privilege.*"

Grant of Coal Lands.

IV.—Grant to John E. Flandin and J. A. Morel under the firm-name of J. A. Morel & Co. from the Cabildo, or Legislative Council, of the District of Bocas del Toro, July 17, 1854, of twenty-five thousand fanegadas of vacant land, situated between the creeks known as Banana, Splithill, the river Culebra, and the Cordilleras, (including all the “denouncements” hereinafter described; see sec. V,) with a view to facilitate coal-mining; made under a law of April 12, 1851, of the Congress of New Granada.

Coal Mines.

V.—(1.) Decree of the Government of the Province of Chiriqui, August 4, 1854, recognizing the “denouncement” by J. A. Morel and J. Eugene Flandin, of certain locations of coal mines, in the district of Bocas del Toro, to wit: Various veins of coal in the creeks known as Banana, Jones, Cultivation, Splithill, Sandy, Suarian, and Lunekoo, affluents of the Chiriqui lagoon, in the district of Bocas del Toro.

(2.) Certificate of the Alcalde of the District of Bocas del Toro, September 23, 1854, that the conditions of the law had been complied with; that he had put Morel & Co. in legal possession of the mines, and that they had sunk shafts on each of the veins of coal.

(3.) Concession by the Province of Chiriqui, October 3, 1854, whereby J. A. Morel and J. Eugene Flandin were invested with full rights of property and possession in said coal lands.

(4.) Decree of the Government of the Province of Chiriqui, January 8, 1855, recognizing the “denouncement” by J. A. Morel & Co. of a coal mine on Pope’s Island, which had been discovered by them.

(5.) Certificate of the Alcalde of the District of Bocas del Toro, June 6, 1855, that the conditions of the law had been complied with; that he had put Morel & Co. in legal possession of the mine, and that a shaft had been sunk by them on Pope’s Island.

(6.) Concession by the Province of Chiriqui to Morel & Co., July 2, 1855, granting them full and unreserved property to the mine on Pope’s Island.

(7.) Power of attorney, Bocas del Toro, August 26, 1854, from J. A. Morel and J. Eugene Flandin to George Pearce, of New York City; general authority to sell and convey all the interests of said Morel and Flandin, in property, including the lands and mines described in the foregoing sections IV and V of this abstract.

(8.) Conveyance of same, New York, July 28, 1855, by George Pearce, to the Chiriqui Improvement Company.

Transactions of the United States with the Chiriqui Improvement Company.

VI.—(1.) Indenture; May 21, 1859. “The United States acting by and through Isaac Toucey, Secretary of the Navy,” &c., and the Chiriqui Improvement Company and Ambrose W. Thompson, stipulates for—

(a.) The right of way or transit for Government purposes of every description over the road, from the Chiriqui Lagoon to David, free of toll, &c.

(b.) Lands not exceeding five thousand acres on the Chiriqui Lagoon, for coal-depots and naval stations, and also the same, at the harbor of Golfo Dulce.

(c.) The right to use as harbors, the waters of the lagoons, bays, or gulfs sheltered or surrounded by the lands of Ambrose W. Thompson and the Chiriqui Improvement Company on both sides of the Isthmus.

(d.) The right to all coal necessary for naval purposes where coal-depots and naval stations are established, upon the payment of the royalty to the Province of Chiriqui, as provided in the original grants.

(e.) In consideration of this grant, the United States agreed to pay \$300,000, upon the ratification of the contract by Congress.

[NOTE.—The contract was approved by the Senate, but failed in the House of Representatives on account of the derangement of the national finances at the session of 1860-'61. The Senate adhered, and, in a committee of conference, it was determined, as a compromise, that a commission of officers, detailed for the purpose, from the Navy, the Army, and the Civil Service, should be sent out to make an exploration of the Chiriqui harbors and coal deposits, and of the practicability of a railroad route across the Isthmus to connect the said harbors, and to report at the ensuing session of Congress. A naval expedition set out from Norfolk for this purpose in August, 1860, Captain Engle, U. S. N., in charge, in the “Brooklyn,” Captain Farragut commanding. The commission, composed of officers of the Army and Navy, and of the Civil Service of the United States detailed for the purpose by the President, and instructed to make a preliminary survey of the Chiriqui Isthmus with reference to the purposes of the contract, landed on the 24th of the same month in the Chiriqui Lagoon, and returned on the 28th of November following, having made a complete exploration of the harbors upon both coasts and an examination of the intervening country across the Isthmus, including the coal fields on the Atlantic side.

The expedition was fitted out with especial care for the efficient prosecution of the work. The report of Captain Engle, made January 16, 1861, includes the reports made to him by Lieutenant Jeffers, U. S. N., hydrographer; by Lieutenant Morton, U. S. A., topographical engineer; and by Dr. John Evans, geologist.

This very favorable and satisfactory report of the results of the expedition, sustaining in all respects the action of the administration of President Buchanan in the premises, was transmitted to Congress January 22, 1861, by the President, and attracted marked attention. It

was followed by an urgent letter from the Secretary of the Navy recommending the appropriation of the amount required for the fulfilment of the obligations of the contract, to enable the Government to establish the naval stations provided for, and to secure the great advantages of the coal supply, incident to their location and covered by the contract. But the momentous question of the civil war was pending. All appropriations other than such as were requisite for the necessities of the Government were precluded, and no immediate action was taken by Congress on the report of the commission.

The interest of the Government in the matter continued, however, and in the following year, the report of the results of the expedition and the action taken by the preceding administration, having in the meanwhile been brought to the attention of President Lincoln; after very careful consideration, a new agreement, embracing, together with the stipulations in substance, of the preceding contract, an elaborate plan for the colonization upon the Chiriqui Isthmus, of such of the recently-emancipated people of the South as might desire to emigrate, was entered into, Congress having previously appropriated the aggregate amount of \$600,000, to be used at the discretion of the President in furtherance of the plan of colonization.]

(2.) Draft of contract approved, "Executive Mansion, Washington, September 11, 1862," by A. Lincoln, and the Secretary of the Interior directed to execute the same.

(3.) Contract, Washington, September 12, 1862, "Caleb B. Smith, Secretary of the Interior, for and on behalf of the United States and Ambrose W. Thompson," stipulates for the survey of "the arable and pasture lands" in the Province of Chiriqui, comprised within the concessions owned and controlled by said Ambrose W. Thompson; their allotment to and the settlement thereon of "colonists of African descent who "propose emigrating thither from the United States." The contract provides also for working the coal mines upon the property of the Chiriqui Improvement Company, and the supply of coal for the Navy of the United States.

(4.) Irrevocable power of attorney, September 12, 1862, Ambrose W. Thompson to "Caleb B. Smith, Secretary of the Interior of the United States, and each successive Secretary thereof," "to execute the said purposes, and carry out all the necessary conditions and obligations." "Considerations and obligations agreed to," and power of attorney "accepted" by said Secretary.

[NOTE.—The exigencies of war induced a change in the purpose of the Government with respect to the immediate prosecution of the plan of colonization set forth in these instruments, and fulfilment on the part of the Government of the obligations of the contract was necessarily postponed. It was deemed advisable to enlist the freedmen as soldiers, and to this end to defer for a time the opportunity of emigration, and no step has since been taken by the Government looking to the resumption of the undertaking.

This agreement, including the mutual obligations of the irrevocable power of attorney vesting the title to a portion of the possessions of the Chiriqui Improvement Company, is still a subsisting contract between the parties. It was repeatedly recognized officially, during the subsequent years of the administration of President Lincoln, as existing unimpaired in any respect whatever. Among the evidences of such recognition, particular attention is due to the letter of March 18, 1864, from the Hon. J. P. Usher, then Secretary of the Interior, addressed to the president of the Chiriqui Improvement Company, in which it is expressly claimed, in behalf of the United States, that the contract is still in force, and that its provisions may be availed of, by the Government for all the purposes intended, at any time when deemed advisable on the part of the Executive. The opinion is added, that a high estimate is entertained with respect to the international value of the property, and the benefits to be derived therefrom, by extended commercial relations between this country and neighboring maritime States. With the postponement of the enterprise in behalf of the emancipated slaves, the establishment of the naval stations contemplated was also again deferred. It is known, however, that Mr. Lincoln gave the subject his continued and very earnest attention, and that he expressed a decided purpose to resume the prosecution of the great work he had begun, and which he cherished with so much interest and hope, looking forward as he did to the colonization of the freedmen in a land so favorably adapted to this experiment, as a step of great importance in the solution of the embarrassing problem of emancipation, and to the possession of the Chiriqui harbors, with their exceptional command of both the great oceans east and west, as a measure of wise forethought for the development of the commercial and maritime interests of the United States. The interest of the Government in the matter was renewed from time to time during the administrations of Presidents Johnson and Grant, but no plan for definite action adopted.]

Authentication of Titles by Certificate of Granadian Minister.

VII.—Official certificate of General P. A. Herran, Granadian minister to the United States, April 8, 1859, to whom the evidences of the title of the Chiriqui Improvement Company, to the possessions described in sections III, IV, and V, of this Abstract, were submitted, at the instance of the Attorney-General of the United States, in which it is certified under the seal of the legation at Washington—

- (1.) That the documents are genuine and entitled to full faith and credit.
- (2.) That the titles are regulated by Granadian legislation, and that all the formalities of law have been observed.
- (3.) That at the dates of the several grants, Chiriqui was a province of New Granada, and had a Provincial Legislature and Governor.
- (4.) That the province then possessed two classes of lands, the "Indulto," granted by the King of Spain; and the "Tierras Baldeas," or vacant lands, granted by the Congress of the Republic of New Granada to the Provinces.

(5.) That the Provincial Legislature had full power to make the grants of public lands, and concessions of privileges, and that the Governor of the province had power to grant the titles to the coal mines, aforesaid, "in virtue of the existing law (10, part 4, section 5) of the Granadian code."

(6.) That by the Federal Constitution of New Granada, foreigners enjoy the same civil rights as the citizens of that country, and are authorized "to buy, to possess, and to sell real estate."

Proceedings in the Supreme Court of New Granada, to annul the right to improve and control the Wagon-road from David, in Chiriqui, to the Chiriqui Lagoon.

VIII.—The contract of May 21, 1859, between the Chiriqui Improvement Company and the United States, attracted the attention of the Panama Railroad Company. The improvement of the road from David to the Chiriqui Lagoon had, already been the subject of complaint on the part of the railroad company; the provision of the contract, authorizing the use of the road by the United States, free of toll, gave prominence to the alleged grievance, and accordingly the Attorney-General of New Granada, at the instance of that company, in support of its claim to an exclusive right to construct a road for wheeled carriages across any portion of the Isthmus connecting North and South America, filed a petition in the Supreme Court at Bogota, April 20, 1860, applying for "the suspension" of the law of the State of Panama affirming the ordinance of the Province of Chiriqui, by which the right to improve and control the wagon-road from David to the Lagoon was granted. It was claimed—

(1.) That the ordinance violated the charter of the *Panama Railroad Company*, inasmuch as the seventh article thereof stipulated that no other company should be permitted to build a road of any kind "between the two oceans across the Isthmus of Panama."

(2.) That it also violated the said charter, because, to make the road "into a carriage-road is not to improve it, but rather to make a new one, and one of a different nature."

The court pronounced its decision at Bogota, May 29, 1860, based upon the following grounds:

(1.) That the road-grant to Ambrose W. Thompson contemplated "a horse or mule-road," and "the moment it accommodated wheeled vehicles, its nature is entirely changed."

- (2.) That the road extended from the Atlantic to the Pacific coast.
- (3.) That there is no isthmus between North and South America but the Isthmus of Panama, which begins at Darien and extends to the confines of Costa Rica.
- (4.) That the charter of the Panama Railroad Company would be violated by the construction of a carriage-road from ocean to ocean anywhere upon the isthmus.

Upon these grounds the following judgment was rendered:

"The Supreme Court of the Confederation, using the power conceded to it by Article 59 of the Constitution, suspends Article 2 of the law of the 6th October 1855, of the State of Panama, *so far as* it approved the ordinance issued in David, the 20th February, 1854, conceding a privilege to Ambrose W. Thompson, to make the road between said city and the Chiriqui Lagoon *fit for wheels*, said ordinance being contrary to the dispositions quoted."

[NOTE.—It is enough to say in exposing the utter absence of foundation, either in fact or in law, for this preposterous decision, that in express terms it was a total exclusion of the inhabitants of the entire Isthmus, and all others, for all time, from the right to construct a road of any description for wheeled carriages across the American Isthmus upon any line within its limits, confining the right of such transit to the sole control of the monopoly in behalf of which the proceedings were instituted, and requiring the citizens of provinces of the Isthmus more than a hundred miles remote from the line of the railroad, to restrict their roadways for transit from sea to sea to foot-trails and mule-paths only.

The decree of the court, if valid, affects only the road-grant.

It is to be observed that with respect to the rights of the Chiriqui Improvement Company, the decision of the court in no respect whatever affects *the title of the company to the lands acquired by virtue of the completion of the road*, in compliance with the terms of the grant. The decision had no further purpose or extent than to affirm the absurd exclusive claim of the Panama Railroad Company with respect to transportation across the Isthmus.

The validity of the title to the *land-grant*, which was coupled with the obligation to improve the road, was not in issue, and has never been questioned. The conditions of the grant had all been fully complied with, and the title to the lands, had vested, previous to the date of this proceeding, and the decision of the court had no bearing whatever upon this or any other title, franchise, or privilege of the Chiriqui Improvement Company, except the right to improve and use the said road.

The Hon. George W. Jones, ambassador from the United States at Bogota at the time, entered a formal protest in behalf of Ambrose W. Thompson, as a citizen of the United States, and the grantee of the road privilege, against the decision depriving him of this privilege.

The decision in no respect whatever affects the right of the Chiriqui Improvement Company to construct roads for transportation, of any and every description, between the two harbors embraced within the

limits of its possessions. The unrestricted nature of this right; its freedom from conflict of any description with the terms of the charter of the Panama Railroad Company, and the true interpretation of the charter with respect to the territorial limits within which the exclusive rights and privileges of the latter company are confined, are conclusively shown in the certificate of General Mosquera, at the date of the certificate, (London, January 3, 1866,) ambassador from Colombia to Great Britain, and President elect of Columbia. By a treaty of amity, commerce, and boundaries concluded between New Granada and Costa Rica on the 11th of June, 1856, a portion of the Province of Chiriqui included in the land-grant originally made to Agnew, was transferred to the territory and jurisdiction of Costa Rica. The entire property of the company on the Pacific coast in the vicinity of Golfo Dulce, by virtue of this treaty, ceased to be a part of the State of Panama and of the Republic of Colombia, and General Mosquera, referring to these circumstances, expressly certifies: "That according to the contract with the Panama Railroad Company, it is only prohibited to concede privileges to make carriage-roads or railways from one sea to the other *across the Isthmus of Panama*; but they may be constructed from Colombia *to the Republic of Costa Rica*, either from the interior of the State of Panama, or from Chiriqui Lagoon, or the Bay of Almirante." He further certifies that the territory in the vicinity of Chiriqui Lagoon did not, "at the time of the concession to the Panama Railroad Company, belong either to the Province of Veragua, or that of Panama, as it is expressly said in article 7 of the law of June, 1855, and which territory was called in that epoch 'Bocas del Toro,' and was separated from Veragua by the limits fixed in the Cordillera which traverses the continent, and *in which territory at that time could be and in the present can be conceded*, the opening of a railroad from the Bay of Almirante or the Chiriqui Lagoon to the territory of Costa Rica, on the other side of the river Culebra, which is the limit of the Colombian territory; concerning which limit the two Governments of Colombia and Costa Rica have existing agreements of limits," and that "the legal concessions that have been made by the ancient legislatures of the provinces must be carried out and accomplished." The purpose of the company to exercise this right was subsequently made the foundation for the comprehensive grant included in the Mosquera contract, approved by the Colombian Congress, to which further reference is hereafter made in its proper place, and a copy of the contract inserted; and no doubt whatever now exists as to the unqualified right of the Chiriqui Improvement Company to construct a road across the isthmus, in the province of Chiriqui.

It is to be observed further, that with respect to all other rights, franchises, and privileges acquired by Ambrose W. Thompson and the Chiriqui Improvement Company, by virtue of other grants herein referred to, (see secs. II, III, IV, V, of this abstract,) no question whatever was involved in the proceedings in the supreme court at Bogota. All these interests remain, in every respect, undisturbed, their validity unimpaired under the original grants and concessions from the Province of Chiriqui.

But the decree of the court is not valid with respect to the road-grant—the right to improve and use the road from the Chiriqui Lagoon to David.

(1.) The question whether the charter of the Panama Railroad Company was or was not violated was a *private* question, concerning *private*

rights merely. The Attorney-General had no authority to refer it to the Supreme Court as a *public* question.

(2.) The Supreme Court had no jurisdiction over *questions of private rights*, unless the proper parties were before it. The proceedings of the court were *ex parte*, and, therefore, not binding upon Ambrose W. Thompson or the Chiriqui Improvement Company, who were neither parties nor privies.

(3.) The Attorney-General of New Granada, at the instance of the Minister of the Interior, had passed upon the original ordinance of July 14, 1854, granting the right to make and use the road, as a *public* question, and had decided that it did not infringe any of the rights of the Panama Railroad Company; and, therefore, as *private rights* had been subsequently acquired, neither the Attorney-General nor the Supreme Court had any authority to consider it a *public* question, to the invalidation or disturbance of these vested rights; and the Supreme Court having affirmed the road-grant by its decree of January 11, 1855, and private rights having become thereby vested, had no authority to reverse the former decision and destroy these rights by a proceeding upon information upon alleged *public interest*.

(4.) It was a mere pretence of the Panama Railroad Company, that the only isthmus between North and South America is the Isthmus of Panama; every recognized authentic and standard history and geography, of the isthmus connecting North and South America, gives a fixed location to the isthmus of that name, and recognizes the Isthmus of Chiriqui, as well as others, as distinct from that of Panama. The name is derived from that of the ancient province with which it is identified, and within which and the adjoining Province of Veragua, and contingently certain other specified provinces to the south of the line of the road, the right of the Panama Railroad Company to public lands is repeatedly, in express terms, in the several articles of its charter, restricted.

The effect of the decree, upon the contract, between the United States and the Chiriqui Improvement Company.

The decree, whether valid or otherwise, with respect to the precise question at issue, has an important incidental bearing as an implied approval by the court, of all the remaining provisions of the contract of May 21, 1859, between the United States and the Chiriqui Improvement Company.

(1.) The information of the Attorney-General, brought the entire contract, with all its conditions and provisions, before the court.

(2.) The court confined its decree to the nature of the road-grant, and only held that to be invalid "so far as" it gave the right to build a carriage-way.

(3.) The effect, therefore, of the decision was to leave as approved by the Supreme Court of New Granada, the remaining provisions of the contract in behalf of the United States for—

(1.) The establishment of coal-depots, naval stations, &c., in the harbors of Chiriqui Lagoon and Golfo Dulce.

(2.) The right to work the coal mines in the neighborhood of Bocas del Toro.

(3.) The right to possess and occupy all the land conveyed by the Chiriqui Improvement Company for the purposes specified in the contract. The United States is justified, therefore, in assuming that the

establishment of coal-depots and naval stations both at Chiriqui Lagoon and Golfo Dulce, if made, would meet with no objection from the New Granadian authorities. An objection now interposed, would be in bad faith, and estopped by an acquiescence continued for over twenty years.

The following extract from the report of the Committee on Naval Affairs, House of Representatives, Thirty-sixth Congress, First Session, reporting in favor of the approval of the conditional contract between the United States and the Chiriqui Improvement Company, referred to in section VI of this Abstract, is of importance upon this point. Referring to the action of the Granadian Senate upon the Cass-Herran Treaty, in 1858, the report proceeds: "It was then declared that 'if the United States wanted depots for their Navy or merchant vessels, the Isthmus and its islands were as free to them as the Ocean; our laws do not oppose, but encourage it—that foreign citizens have in the whole Granadian territory, the right to purchase or lease and possess any kind of real estate whatever.' 'In this point of view, the New Granadian Senate considers that, for all practical purposes, the seventh Art.'—of the treaty—providing for a coal-depot—'might be immediately obtained by American citizens, for the Navy Department, without the aid of said article, and they consider the imperfect knowledge the American people possess of New Granadian laws is the cause why such depot had not been established long ago.'"

The report of the Committee concludes: "This is conclusive as to the views of New Granada, and the precedent of the station in the Mediterranean settles clearly the authority of the United States to act for the benefit of the Navy. In securing the right of way, free of tolls, she provides independent mail facilities for the whole Pacific coasts of North and South America, which may hereafter become of vast benefit to the commerce of the country, and which, at the present time, without the additional and great benefit of the coal and maritime stations, would justify a much larger expenditure than that provided in the contract."

This report was made May 20, 1860, and the same considerations in this instructive official paper urged, are now, after the lapse of twenty years, and repeated transactions with successive administrations, during the interval, for the attainment of the important objects contemplated, again presented to the attention of the Government, with the vastly-increased weight they receive from the circumstances and requirements of the present time.

A somewhat extended review has been made in this note, of the decision of the court at Bogota. It is important that its precise bearing upon the rights of the Chiriqui Improvement Company should be clearly defined.]

Additional grant by the United States of Colombia, recognizing former grants and the right to construct a railroad or wagon-road across the Isthmus.

IX.—Contract, London, March 3, 1866, between General de Mosqueira, Minister Plenipotentiary to Great Britain, (and then President elect,) of and in behalf of the United States of Colombia, and Ambrose W. Thompson, in behalf of the Chiriqui Improvement Company, grant-

ing to said company, in consideration of the establishment of steamship coastwise service upon the Atlantic and Pacific shores of the American Isthmus—

(1.) All the public lands in the districts of Bocas del Toro and Alanje.

(2.) Full power to improve said lands, and construct all roads and structures requisite for colonization purposes.

This contract expressly and specifically recognizes—

(1.) The right of the Chiriqui Improvement Company to construct a railroad or wagon-road across the Isthmus from Chiriqui Lagoon to Golfo Dulce; and provides—

(2.) For the establishment of steamship service as aforesaid, and—

(3.) That, upon the approval of the contract by the National Congress, the Chiriqui Improvement Company “shall be recognized as such, and shall be invested with the Colombian national character, having the right to use the national flag,” &c., &c., and—

(4.) That “if, before the close of the year 1867, the company has not been completely organized, and work commenced for the opening of the railway;” and if the steamship service contemplated shall not be supplied “as hereinbefore said,” then the said contract “is by that fact annulled.”

(a) Ratification of said contract by the Colombian Congress, Bogota, June 20, 1866. Attested by the proper officers of the Government, including the President, under seal.

(b) Certificate of Commissioner of Fish Creek, duly verified by local authorities of Bocas del Toro, December 24, 1867, certifying commencement of work, &c., by said company.

(c) Executive decree, Bogota, July 6, 1868, that the Chiriqui Improvement Company, having proved—

(1.) That it is organized according to the stipulation of March 3, 1866;

(2.) That it has commenced the work according to the said stipulation—

The National Executive thereupon declares said company “in the enjoyment of” all its privileges, rights, and exemptions, and accepts one hundred shares of the capital stock of the company, &c., &c.

Grants by the Republic of Costa Rica.

X.—(1.) Grant to Gabriel La Fond, October 5, 1849, of public lands, within the territory of Costa Rica, as claimed by said Republic, (in dispute with New Granada,) to wit: An extended area of agricultural land along the shores of the Pacific Ocean and the bay of Golfo Dulce, in-

cluding the entire shores and waters of the bay, and extending northward ten (10) leagues.

(2.) Grant to Gabriel La Fond, March 10, 1850, at Paris, by Felipe Molino, Costa-Rican minister to France, approved by the Congress of Costa Rica, San Jose, June 15, 1850—a strip of land one league wide, extending from the northeast angle of the above-decreed grant to Chiriqui Lagoon, in the direction of Bocas del Toro.

(a.) Transfer of same, January 10, 1854, by Gabriel La Fond and associates, to Victor Herran.

(b.) Transfer of same, by Victor Herran, February 25, 1854, to Ambrose W. Thompson.

[NOTE.—These grants include a portion of the grants by the Province of Chiriqui, to Santiago Agnew, and to Morel and Flandin. (See sections II and IV.) The conditions, prescribed by the Republic of Costa Rica, were fully complied with, upon completion of the road from Chiriqui Lagoon to David, to connect the waters of the Atlantic with the Pacific.]

Settlement of Boundary between New Granada and Costa Rica; and Treaty Guaranty of Titles.

XI.—(1.) Treaty of amity, commerce, and boundaries between New Granada and Costa Rica, June 11, 1856, by which a portion of the grant, originally made to Agnew, became a part of the territory and subject to the jurisdiction of Costa Rica.

(2.) Decree of the Congress of New Granada, July 9, 1860, affirming the treaty of June 11, 1856, upon condition—

(a) That the grants of lands in the neighborhood of Golfo Dulce, made previous to the treaty by the corporations or authorities of New Granada, should be held to be valid, and that the parties interested in them shall not be disturbed; and—

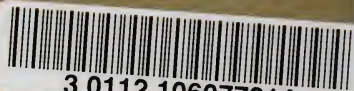
(b) That existing titles, whether legal or equitable, to “either lands or properties which Costa Rica may become possessed of, under this treaty, shall be respected by that Republic.”

[NOTE.—Upon the exchange of ratifications it was mutually stipulated as a part of this treaty, “that the grants of land or other properties in the neighborhood of Golfo Dulce, in favor of individuals, by the corporations or authorities of New Granada, prior to signing of the treaty, shall be in the future as valid as if made by the government of Costa Rica; and consequently the parties interested in such grant shall at no time be disturbed in the enjoyment of them.” The treaty is therefore a mutual and reciprocal guarantee by New Granada and Costa Rica, of the validity of the title of the Chiriqui Improvement Company to all its possessions on the Pacific Coast of the Isthmus, and their protection by both nations.]

The Titles are Valid.

XII.—Upon the foregoing data, the opinions, official and unofficial, of eminent lawyers of the United States and England, and of the Republics of Colombia and Costa Rica, have, from time to time, been expressed in positive and unqualified approval of the several titles of the Chiriqui Improvement Company and Ambrose W. Thompson, set forth in this abstract, as in all respects valid and perfect. Opinions are included, of Señor E. F. Cordera, Judge of the Superior Court of New Granada; Don Justo Arosemena, former President of the New Granadian Congress, and now Minister from Colombia to the United States; Señor Felipe Molina, Minister from Costa Rica to the United States; Hon. Jere. S. Black, Attorney-General; Hon. Isaac Toucey, Secretary of the Navy; Hon. James Green, Hon. W. P. Fessenden, Hon. Francis P. Blair, Sr.; Hon. Caleb B. Smith, Secretary of the Interior; Hon. J. P. Usher, Secretary of the Interior; Hon. Salmon P. Chase, Secretary of the Treasury; Hon. Edward Jordan, Solicitor of the Treasury; Hon. Wm. M. Evarts; Mr. W. R. Drake, of London.

The report of the Naval Committee of the House of Representatives, 36th Congress, 1st session, May 24, 1860, Hon. F. H. Morse, of Maine, chairman, upon the conditional contract of May 21, 1859, by the Secretary of the Navy, with the Chiriqui Improvement Company, also concurs in the opinion that the evidence of the "legal soundness" of the rights of the company is "sufficient to remove all doubt on the question of title."



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